

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 3-5 are pending in the present application. Claim 3 has been amended to recite, "the cytotoxic activity with IFN- $\gamma$  is increased by about 20 to about 40% with respect to standard macrophages incubated with IFN- $\gamma$ ". Support for this recitation may be found in the present specification at page 5, lines 25-35; and page 14, table 3.

Claims 3-5 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by CHOKRI I. This rejection is respectfully traversed.

As proposed by the Examiner, the claims have been amended to recite that "the cytotoxic activity with IFN- $\gamma$  is increased by about 20 to about 40% with respect to standard macrophages incubated with IFN- $\gamma$ ". As a result, the Applicants believe that the present amendment obviates this rejection. Applicants would like to thank the Examiner for her suggestion as how to overcome this rejection.

The Examiner next rejected claims 3-5 under 35 U.S.C. § 102(e) as being anticipated by FANGER. Applicants believe that the rejection has been obviated by the present amendment.

As with CHOKRI I above, the claims were amended to include "the cytotoxic activity with IFN- $\gamma$  is increased by about

20 to about 40% with respect to standard macrophages incubated in the presence of IFN- $\gamma$ ". We respectfully thank the Examiner for making the suggestion on how to overcome the objection. As such, the objection is obviated.

Claims 3-5 also were rejected under 35 U.S.C. § 102(b) as being anticipated by MEDAREX. Applicants believe that this rejection has been obviated by the present amendment.

As with the CHOKRI I and FANGER rejections, the Examiner stated that this objection could be overcome by amending the claims to recite "the cytotoxic activity with IFN- $\gamma$  is increased by about 20 to about 40% with respect to standard macrophages incubated in the presence of IFN- $\gamma$ ". We respectfully thank the Examiner for making this suggestion. Inasmuch as the claims have been amended to include this suggestion, the objection is obviated.

Claims 3-5 also were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,540,994 in view of CHOKRI I. Applicants believe that this rejection has been obviated by the present amendment.

The Examiner respectfully is referred to a terminal disclaimer attached hereto for Patent No. 6,540,994. Inasmuch as the terminal disclaimer obviates the double patenting rejection, the Examiner respectfully is requested to withdraw the objection on this basis as to claims 3-5.

Claims 3-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over CHOKRI II in view of CHOKRI I, FANGER, or MEDAREX. Applicants believe that this rejection has been obviated by the present amendment.

The publication date of CHOKRI II is less than one year from the effective filing date of the present application. The Examiner is respectfully referred to a declaration attached hereto dated May 22, 2004. The declaration is by Mohamed Chokri and Jacques Bartholeyns in which they declare that they are the joint inventors of the application and the only inventors of the subject matter claimed therein. The CHOKRI II article is not a publication by "another" and fails to qualify as prior art under 35 U.S.C. § 102(a). Thus, Applicants respectfully request that the rejection be withdrawn. In view of the above, Applicant believes that this application is now in condition for allowance.

Entry of the above amendments is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.


Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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